

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.101. (This is a GIL).

November 9, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated August 3, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We represent a company (the 'Company') that has asked us to identify the Illinois sales and use tax liabilities, if any, that it may incur as a result of its operations. For the reasons set forth below, we believe that the Company will incur no such liabilities and request that the Illinois Department of Revenue (the 'Department') respond to this general information request confirming our conclusion. Alternatively, if the Department believes that a different conclusion applies, we request that the Department inform us of that conclusion together with its analysis relating thereto.

On June 2, 1999, we discussed the issue presented herein by telephone with a tax specialist employed by the Department named PERSON (no last name was given); PERSON concurred with the analysis set forth herein. Our client has informed us, however, that it had previously received a different oral answer from another Department employee (our client does not recall the name of such employee), and has asked that we obtain written guidance on the issue. Because our client expects to be making significant sales to Illinois customers in the near future, a prompt response is respectfully requested.

Factual Overview

The Company is a specialty printer incorporated outside the State of Illinois (for simplicity, the Company's state of incorporation is hereinafter referred to as 'State X'). The Company custom prints items such as manuals, brochures, books and directories to the specifications of its customers, some of whom are located in Illinois.

The Company, which has all of its printing facilities in State X, purchases all materials and supplies in State X or from out-of-state vendors who ship such materials and supplies into State X by common

carrier. None of the out-of-state vendors are located in or ship materials and supplies from Illinois. Under the sales and use tax laws of State X, the Company purchases such materials and supplies on a sales/use tax-free basis.

The Company prints the products in State X, and then ships the products, by common carrier to the customer (or at the customer's direction, to a location designated by the customer). With regard to the Company's Illinois customers, most of the custom printed material is shipped to Illinois locations, although, from time to time, the customer will designate that the product be shipped to a non-Illinois location for use. A number of the Company's Illinois customers may be tax-exempt, i.e. are entitled to make purchases without the payment of Illinois sales or use tax.

The Company solicits Illinois sales by means of print and electronic advertising and through the activities of an employee who is an Illinois resident.

In addition to relying on the specified facts, please make the following assumptions when responding to this general information request:

- (1) the company has nexus with Illinois;
- (2) the Company is a serviceman as that term is defined by SOT Reg. Section 140.201(f) ('Serviceman');
- (3) the Company is 'engaged in graphic arts production' as that phrase is defined by Section 3-10 of the Service Occupation Tax Act (35 ILCS 115/3-30);
- (4) the Company's aggregate annual cost price of tangible personal property transferred as an incident to the sales of service is less than 75% of the aggregate annual total gross receipts from all sales of service; and
- (5) the Company is not otherwise required to be registered as a retailer under Section 2a of the Retailers' Occupation Tax Act.

Question Presented

Based on the facts and assumptions set forth above, does a De Minimis Serviceman incur any illinois sales or use tax liabilities with respect to the sale of custom printed materials when such De Minimis Serviceman is not otherwise required to be registered under the Retailers' Occupation Act and elects to be subject to the Use Tax Act?

Analysis

The question presented requires an analysis of four Illinois taxes: (1) the Retailer's Occupation Tax ('ROT'), (2) the Use Tax ('UT'), (3) the Service Occupation Tax ('SOT'), and (4) the Service Use Tax ('SUT'). In general, Servicemen are subject to SOT and SUT instead of ROT and UT. However, according to Section 2 of the SOT Act (35 ILCS 115/2) and Section 2 of the SUT Act (35 ILCS 110/2), as well as numerous general information letters (see, e.g., Private Letter Ruling No. ST-98-0456-GIL), Servicemen engaged in graphic arts production whose aggregate annual cost price of tangible personal property transferred as an incident to the sales of service is less than 75% of the aggregate annual total gross receipts from all sales of service ('De Minimis Servicemen'), and who are not otherwise required to be registered as a retailer, may elect not to be subject to SOT and SUT. Instead, upon such election, De Minimis Servicemen become subject to ROT and UT on *purchases* of tangible personal property transferred as an incident to sales of service.

Section 2 of the SOT Act specifically provides, in relevant part, as follows:

'Sale of service' means any transaction except ... (7) at the election of any servicemen not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act made for each fiscal year sales of service in which the aggregate annual cost price of tangible personal property transferred as an incident to the sales of service is less than ... 75% in the case of servicemen ... engaged in graphic arts production, of the aggregate annual total gross receipts from all sales of service. The purchase of such tangible personal property by the serviceman shall be subject to tax under the Retailers' Occupation Tax Act and the Use Tax Act.

Assuming the Company makes this election, it will not incur any Illinois SUT or SOT liabilities. Furthermore, although 'subject to' ROT, the Company will not incur ROT liability. The statutory language quoted above makes clear that it is the De Minimis Servicemen's 'purchase of tangible property' that is subject to tax; the De Minimis Servicemen's sale of tangible personal property is not subject to tax. ROT, therefore, does not apply because it is imposed on the sale of tangible personal property. See, e.g., Private Letter Ruling No. ST-98-0456-GIL (stating that De Minimis Servicemen may elect to pay UT without mentioning ROT).

Finally, although 'subject to' UT, the Company will not incur UT liability. According to Section 3 of the UT Act, UT 'is imposed upon the privilege of using in [Illinois] tangible personal property purchased at retail from a retailer.' The reason the Company will incur no UT liability is clear: the Company does not use (or purchase) tangible personal property in Illinois. As a result, based

on the specified facts and assumptions, the Company will not incur any sales or use tax liability in Illinois.

We thank you in advance for your attention to this request. Please note that we have reviewed the responses of the Department to various general information requests regarding similar issues. Such responses generally address the methods Servicemen may use to calculate their tax base. Our inquiry is more specific, it concerns the tax liability of a non-Illinois Serviceman who purchases all of its supplies outside of Illinois and elects to pay UT (generally the fourth alternative of those described by the Department). Accordingly, please direct your response to our specific inquiry.

We also ask that you confirm that, without regard to the analysis presented above, the Company would not incur Illinois sales and use tax on the materials it ships to non-Illinois locations at the direction of its Illinois customers for use outside Illinois.

Should you have any questions or require further information, please call me at #####.

We are unable to give you the ruling you request in the context of a General Information Letter. General Information Letters, as stated above, give general, non-binding information to taxpayers. In order to receive the specific ruling you request you must submit the information necessary for a Private Letter Ruling, including disclosure of the taxpayer.

For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.2000, which is the regulation for "Persons Engaged in the Printing, Graphic Arts or Related Occupations, and Their Suppliers." As a general rule, when products are items of general utility and serve substantially the same function as stock or standard items, the products will be subject to the Retailers' Occupation Tax when sold. Items which serve substantially the same function are those which, when produced on special order, could be sold as produced to someone other than the original purchaser at substantially the same price.

Items that would not be considered stock or standard items and would not be sold to someone other than the purchaser for substantially the same price would not be subject to the Retailers' Occupation Tax when sold, but would be subject to the Service Occupation Tax. Special order or custom print items are generally not considered stock or standard items and are generally not sold to someone other than the purchaser for substantially the same price. Therefore special order or custom print items are generally subject to the Service Occupation Tax. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.101.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax

liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Generally, special order printers calculate their tax base utilizing either the third or fourth method. The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

Generally speaking, no tax liability is incurred by the customers of out-of-State servicemen who have nexus with Illinois and which are also qualified to utilize the final method listed above. This being the case, such servicemen have no tax collection obligations on such service transactions.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

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If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.